STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 122784-001**

Blue Care Network of Michigan
Respondent

Issued and entered
this 17th day of January 2012
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On August 9, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. After a preliminary review of the material submitted, the Commission accepted the request on August 16, 2011.

The Commissioner notified Blue Care Network of Michigan (BCN) of the request for external review and requested the information it used to make its final adverse determination. The Commissioner received BCN's initial response on August 9, 2011. BCN provided additional information on August 23, 2011.

Initially this case appeared to involve only contractual issues so the Commissioner did not assign it to an independent review organization (IRO) for review by a medical professional. Upon further evaluation the Commissioner determined this case would benefit from review by an outside expert and assigned it to an IRO which submitted its recommendation on September 19, 2011.

II. BACKGROUND

The Petitioner has medical coverage as a member of BCN. Her benefits are defined in the *BCN 1 Certificate of Coverage* (the certificate). She also has primary dental coverage from Metropolitan Life Insurance Company (Metropolitan).

In February 2011 the Petitioner's dentist requested authorization from BCN for a bone graft in the maxillary left quadrant (CPT code 21210). According to her dentist, the Petitioner had multiple congenitally missing teeth and a cyst in the area of the left maxilla and required the placement of a bone graft. On March 7, 2011, the bone graft was performed along with the removal of the maxillary left third molar and a sinus lift. The amount charged for this care was $1,650.00 of which Metropolitan paid $301.50.

On March 10, 2011, BCN denied coverage for the bone graft. The Petitioner appealed the denial through BCN's internal grievance process and received its final adverse determination letter dated June 27, 2011.

III. ISSUE

Did BCN properly deny coverage for the Petitioner's bone graft?

IV. ANALYSIS

Petitioner's Argument

In the request for external review, the Petitioner's representative stated:

> [The Petitioner] was born without some permanent teeth. She had braces. After her upper baby tooth fell out, the dentist said the space needed to be filled. The best way to do that would be an implant. [The Petitioner] congenitally did not have enough bone in the sinus cavity. This required her to have a bone graft. We are seeking payment for a bone graft since this was a birth anomaly, not for the implant.

The Petitioner argues that the bone graft was done to correct a congenital anomaly and therefore should be a benefit under section 1.18 of the certificate's Schedule of Benefits:

> **Reconstructive and Cosmetic Surgery**
>
> Elective cosmetic surgery is a benefit only when authorized by a Plan Physician for correction of conditions resulting from accidental injury or traumatic scars; for repair of a surgical injury or deformities; for correction of a congenital anomaly of a child; or for correction of deformities resulting from disease such as Bell's Palsy or fibrocystic disease. Therapeutic reconstructive surgery is a benefit when authorized by a Plan Physician as medically necessary. [underlining added]

The Petitioner believes the bone graft was medically necessary to correct a congenital anomaly and should be a benefit under her medical coverage with BCN.

Respondent's Argument

In its final adverse determination of June 27, 2011, BCN explained its denial of the bone graft:

> . . . The [grievance] Panel has maintained the denial; the surgery was for the preparation of a dental procedure and is an exclusion to our Blue Care Network Medical Policy.

It is BCN's contention that the bone graft does not meet the criteria for dental coverage under the certificate.

Commissioner's Review

Dental-related services are generally excluded under the certificate. The limitation is found in section 2.13 of the Schedule of Benefits:

> **Dental Services**
>
> Dental services, dental prosthesis, x-rays, and oral surgery are not a benefit under this Certificate except as specifically provided in Section 1.19.

Section 1.19 lists the types of dental services that are covered:

> **Oral Surgery**
>
> Oral surgery and x-rays are a benefit only when authorized by a Plan Physician for the following conditions:
>
> A. Treatment of fractures of the jaw and facial bones, and dislocation of the jaw.
>
> B. Oral surgery necessary for prompt repair of trauma of the jaw, natural teeth, cheeks, lips, tongue, and roof and floor of the mouth.
>
> C. Medically necessary cutting procedures for treatment of lesions, tumors and cysts on or in the mouth, as prescribed by a Plan Physician.
>
> D. Hospital services and related medical services for oral surgical procedures which are medically required to be performed on an inpatient or outpatient hospital basis because of an unrelated medical condition.

In order to determine if the bone graft was a type of covered oral surgery or an excluded as dental service, the issue was presented to an independent medical review organization (IRO) for analysis as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is a dentist who is certified by the American Board of

Oral and Maxillofacial Surgery (diplomate) and is in active practice. The IRO reviewer's report includes the following analysis and conclusion:

> **Reviewer's Decision and Principal Reasons for the Decision:**
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> Based on the documentation submitted for this review, it is the determination of this reviewer that the procedure the [Petitioner] underwent on March 7, 2011 was for the preparation of a dental procedure.
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> * * *
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> . . . The Provider's clinical notes were not submitted for review nor is there documentation of a cystic lesion with a radiograph. The only radiograph submitted is with an implant in the #13 area. There is no bone graft noted in the sinus on this film. The radiograph with the implant shows that the implant extends well into the sinus. The operative report dated February 25, 2011 describes a sinus lift procedure. This is a procedure performed to allow an implant to be placed.
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> * * *
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> **Clinical Rational for the Decision:**
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> The bone grafting procedures were performed to allow an implant to be placed. Removal of a cystic lesion in the maxilla would not require a bone grafting as healing would occur without any grafting. There is no documentation of a cyst and no pathology report. The bone grafting was performed to increase the available bone in the sinus above the #13 area to allow an implant of sufficient length to be placed. The bone graft on the facial of #13 was to allow an implant of sufficient width to be placed. These procedures would not be performed for the removal of a wisdom tooth or a sinus cyst. The removal of a cyst was not billed on the claim form.

The IRO concluded that the bone graft was dental, not medical, in nature. Since the certificate excludes all dental services except for very specific kinds of oral surgery, the Commissioner concludes that BCN's denial of coverage for the bone graft was consistent with terms of the certificate.

V. ORDER

The Commissioner upholds Blue Care Network of Michigan's final adverse determination of June 27, 2011. BCN is not required to cover the Petitioner's bone graft performed on March 7, 2011.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner